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09/445,268	04/03/2000	DANIEL RICHARD SCHNEIDEWEND	RCA89068	9731
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Thomson Licensing LLC			EXAMINER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/445,268	<b>Applicant(s)</b> SCHNEIDEWEND ET AL.
<b>Examiner</b> MICHAEL VAN HANDEL	<b>Art Unit</b> 2424

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Christopher Kelley/  
Supervisory Patent Examiner, Art Unit 2424

Continuation of 11:

Regarding claims 16-18, 20, 22, and 24, the applicant argues that the examiner's application of the Graham factors is based on impermissible hindsight. The examiner respectfully disagrees. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

LaJoie et al. discloses a list of VCR timers (col. 20, l. 53-62 & Figs. 10, 11), a list of past and pending Impulse Pay-Per-View (IPPV) purchases (col. 22, l. 15-36 & Fig. 13), and a list of reminder timers (col. 20, l. 21-22 & Fig. 14). The user can cancel VCR timers from the VCR timers list by pressing a "C" key (col. 21, l. 22-29). The user can remove a pending purchase from the IPPV list by pressing a stop key with a particular purchase highlighted (col. 22, l. 15-36 & Fig. 13). Reminder timers are set when a future program is selected or purchased for watching (col. 7, l. 26-32; col. 29, l. 59-67; & col. 30, l. 1-7). LaJoie et al. further discloses an all timers setting of a general settings menu, which displays a list of all active timers in the set-top terminal (col. 22, l. 47-52 & Fig. 14).

LaJoie et al. further discloses that a program can be associated with multiple of the aforementioned lists. For example, a program can be selected for purchasing and recording, thereby setting PPV and recording timers (the top listing in the all timers menu)(Fig. 14). A program can also be selected for purchasing and watching, thereby setting PPV and reminder timers (for example, the channel 77 listing of the all timers menu)(Fig. 14). Pressing the stop key with any timer highlighted causes that timer to be canceled and accordingly removed from the all timers list (col. 22, l. 52-56).

LaJoie et al. further discloses resolving conflicts that arise when a timer setting's contents are modified within the general settings menu (col. 21, l. 30-35). Conflicts can arise, for example, when there are overlapping timers, unusual settings, record timers for unpurchased Impulse Pay-Per-View (IPPV) events, etc. (col. 21, l. 30-67 & col. 22, l. 1-5). LaJoie et al. discloses that a conflict can be resolved by displaying an interactive warning window that presents the user with options for resolving the conflict (col. 21, l. 42-67 & col. 22, l. 1-5). As such, the examiner finds that LaJoie et al. discloses coordinating functions between the three lists and resolving conflicts between the lists.

Regarding claims 16, 18, and 22, LaJoie et al. does not specifically disclose, in response to selection of a program for removal from a list of purchased programs, determining whether the program also appears on the list of programs scheduled for recording and removing, automatically, said program from the list if the program appears on the list. However, as noted above, LaJoie et al. discloses that a user may have selected a program for purchasing and recording, thereby adding the program to both the IPPV and the VCR timers lists. As further noted above, LaJoie et al. discloses that a user may cause a timer to be canceled and removed from the all timers list (col. 22, l. 52-56). LaJoie et al. further discloses resolving conflicts between lists and that a user must purchase an IPPV event in order to record the event (col. 21, l. 42-49 & Fig. 12). It is further clearly illustrated within LaJoie et al. that it was within the realm of one of ordinary skill in the pertinent art to coordinate lists in response to a single user selection. Given the level of one of ordinary skill in the art, and that LaJoie et al. discloses a desire to resolve conflicts that arise when there are record timers for unpurchased IPPV events, the examiner maintains that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to apply the technique of appropriately updating multiple lists containing a single program in response to a single user selection, such as that taught by LaJoie et al., to improve the interactive program guide of LaJoie et al. for the predictable result of resolving the conflict that occurs when there is a record timer for an unpurchased IPPV event.

Regarding claims 17, 20, and 24, LaJoie et al. does not specifically disclose, determining, in response to removing a program from a VCR timers list, whether said program is also a purchased program, and removing the program from a second list of programs representing purchased programs responsive to user selection of an option to cancel the purchase of the program within an on screen display. However, as noted above, LaJoie et al. discloses that a user may have selected a program for purchasing and recording, thereby adding the program to both the IPPV and the VCR timers lists. LaJoie et al. further discloses that a user can select a program for purchasing and watching, thereby setting PPV and reminder timers (for example, the channel 77 listing of the all timers menu)(Fig. 14). As further noted above, LaJoie et al. discloses that a user may cause a timer to be canceled and removed from the all timers list (col. 22, l. 52-56). LaJoie et al. further discloses resolving conflicts between lists and that a conflict can be resolved by displaying an interactive warning window that presents the user with options for resolving the conflict (col. 21, l. 42-67 & col. 22, l. 1-5). The examiner notes that, if a user were to cancel a program scheduled for purchasing and recording from the all timers list, the selection could result in a conflict if there were a reminder timer set in response to the purchasing or recording selections, since there would be overlapping timers. Even if no conflicts were caused by the selection, it would be confusing to the user to cancel all of the timers associated with the program, since the user may only have wanted to remove a VCR timer while still purchasing and watching the program. Although not explicitly disclosing an interactive warning window to resolve such a situation, LaJoie et al. clearly discloses that a user may schedule a program for purchasing and recording or purchasing and watching (Fig. 14) and further clearly discloses the use of interactive warning windows to resolve conflicts caused by overlapping timers and unusual settings (col. 21, l. 30-37 & Fig. 12). As such, LaJoie et al. clearly illustrates that it was within the realm of one of ordinary skill in the pertinent art to display an interactive window with user-selectable options to resolve a situation. Thus, the examiner maintains that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to apply the technique of displaying an interactive warning window with user-selectable options, such as that taught by LaJoie et al., to improve the interactive program guide of LaJoie et al. for the predictable result of resolving a conflict that occurs when a program is associated with multiple timers.

The examiner acknowledges Applicant's argument that LaJoie et al. fails to even recognize the two specific situations described in the claims, and that LaJoie et al. fails to teach or suggest a desirability or apparent reason for such a modification. The examiner notes; however, that LaJoie et al. recognizes that there are situations in which conflicts will arise due to unusual settings caused by user selection, and that LaJoie et al. provides a way of resolving these conflicts. Despite not having explicitly stated every possible conflict that could arise, LaJoie et al. provides a way of resolving the conflicts that occur when unusual settings and conflicts occur in the coordination

of multiple lists. As such, given the scope of the prior art, the differences between the prior art and the claims, and the level of ordinary skill in the pertinent art illustrated by LaJoie et al., the examiner maintains that the claimed conflict resolution techniques would have been obvious given the teachings of LaJoie et al. and the level of ordinary skill in the art at the time that the invention was made.